IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No, 134 of 2004 (S/B)

Rahul Sharma ……. Petitioner

Versus

State of Uttaranchal & others …… Respondents

Mr. Gopal Narain, learned counsel for the petitioner.
Mr. U.K. Uniyal, learned Senior Advocate assisted by Mr. Shobit Saharia, Advocate for respondent No.2.

Hon. P.C. Verma, A.C. J.
Hon.P. C. Pant, J.

By means of the present writ petition, the petitioner has prayed for the issue of a writ of certiorari to quash the orders dated 21.5.2004 and 24.5.2004 passed by respondents No. 3 & 2 respectively, which are contained in Annexure 3 & 5 to the writ petition. A further prayer of mandamus has been sought to direct the respondent No. 2 to promote the petitioner on the post of General Manager (C) according to the seniority list.

We have heard learned counsel for the parties and peruse the record.

Petitioner was initially appointed on 1.12.1987 and posted as Assistant Engineer Civil (Construction Division) in the department of respondent No.2. It is stated by the petitioner in the writ petition that the he is the only eligible candidate and is entitled to be given promotion on the post of General Manager (C) as he had already served as Assistant Engineer for about 16 years and therefore, respondent No. 2, by order dated 22.4.2004 given the charge of the General Manager (C) to the petitioner. But suddenly an order was issued by respondent No. 3 on 21.5.2004, wherein it was mentioned that on the directions of the Chief Secretary, Sri N.S. Rawat working

on the post of Executive Engineer in the office of respondent No. 3 would be given appointment on deputation in the office of respondent No. 2 and therefore, Sri N.S. Rawat was relieved from the office of respondent No. 3. Thereafter, the petitioner made a representation to the Managing Director and requested to fill the promotion post and also stated that the promotion should be made through departmental persons and not through deputation. But, on 22.5.2004 Sri N.S. Rawat joined his duties on deputation in the office of respondent No.2 and vide order dated 24.5.2004, respondent No.2 had posted Sri N.S. Rawat as General Manager (C). Being aggrieved by the said orders dated 21.5.2005 and 24.5.2004, the present writ petition has been filed.

Mr. U.K. Uniyal, learned Senior Advocated on behalf of respondent No. 2 submitted that the post of General Manager (Construction), which has been created by resolution No. 28 in 32nd Boards Meeting of respondent –Corporation held on 22.3.1987, is a selection post. As per Rule 17(3) of the Service Rules of the respondent –Corporation, all Group-A posts in the corporation shall be selection post and shall be filled up by selection, as such the respondent have rightly taken Sri N.S. Rawat on deputation as the post is selection post.

The argument of the learned counsel for the respondent No. 2 is misconceived. The post to be filled up by selection includes promotion in itself. A person outside the cadre cannot be taken on deputation even on the selection post as in that case right of promotion on a selection post is taken away from the person eligible to be considered from promotion on a selection post. The post earlier was filled up by promotion from amongst eligible Assistant Engineers and even at that time, these Rules were applicable and the post was filled up by promotion. When the turn of the petitioner came, a defense has been set up that it is a selection post and persons can be taken on deputation. This is nothing, but a device to deprive the chance of the petitioner for being considered for promotion.

Therefore, we direct that the petitioner's case for promotion shall be considered on the post of General Manager (Construction) within a period of one month from the date of production of certified copy of this order and if the petitioner is found suitable and is selected, he shall be given the charge and the person working on deputation shall be sent back.

With the aforesaid observation, the writ petition is disposed of. No order as to costs.

(P.C. Pant, J.) **(P.C. Verma, A.C.J.)**

Dt. 20.07.2004

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